JURURAYA ENGINEERING SDN BHD

v.

LAU CHEE WENG & ORS

COURT OF APPEAL, KUALA LUMPUR
NH CHAN JCA
ABU MANSOR ALI JCA
AHMAD FAIRUZ JCA
[CIVIL APPEAL NO: A-02-42 OF 1996]
11 MAY 1999

BANKING: *Banker and customer - Joint account - Account opened by main contractor - Whether sub-contractor a customer of the bank - Whether bank liable in damages to sub-contractor for honouring cheque drawn by main contractor - Whether bank owed a duty to sub-contractor*

The appellant was a sub-contractor of Asha Construction ('Asha') for a construction project in Perak. Pursuant to the agreement between them, Asha opened a joint current account ('the account') with the third respondent bank ('the bank'). Asha named two individuals as its signatories to cheques issued from the account, while the appellant named a Lim Mok Guan ('Lim') as its signatory. Subsequently, Asha passed a resolution ('the amended resolution'), the effect of which was to alter the signatories. The amended resolution listed two groups of signatories and specified that all its cheques were to be jointly signed by any two of the three individuals named in the first group and either one of the two individuals named in the second group, one of whom was Lim. A copy of the amended resolution was sent to the bank. Asha then issued a cheque ('the cheque') which was not signed by Lim and the bank had honoured it.

The main issue in this appeal was whether the bank could be held liable in damages to the appellant for having honoured the cheque.

Held:
Per Abu Mansor Ali JCA

[1] There was no banker-customer relationship between the appellant and the bank. The bank owed no duty whatsoever to the appellant, who was not its customer. The bank's customer was Asha and acting in accordance with instructions from its customer, the bank honoured the cheque.

[Appeal dismissed with costs.]

For the appellant - Wiswanathan (V Ganesan with him); M/s PM Mahalingam & Co
For the respondents - A Silvanathan (Shanti Sankey with him); M/s Kean Chye & Sivalingam

[Appeal from High Court, Ipoh; Civil Suit No: 22-135-1993]

Reported by Anne Khoo

JUDGMENT

Abu Mansor Ali JCA:

We heard this appeal on 17 April 1998. After a short argument, we came to the conclusion we agreed with the decision of the learned judge below that the appellant/plaintiff's claim be dismissed with costs to the respondent.

The principal point raised by this appeal is whether the third respondent bank can be held liable in damages to the plaintiff for having honoured a cheque for the amount of RM850,000 dated 7 May 1993 drawn by the bank's customer Asha Construction, a private limited company, the bank having acted on an amended resolution of Asha Construction which had omitted a former signatory of one Lim Mok Guan in the said cheque, the said Lim was representing the plaintiff company.

The facts of the case were as follows. The plaintiff was a sub-contractor of Asha Construction in a building project to construct and complete 96 units of G quarters in Hospital Bahagia, Ulu Kinta, Perak.

One of the terms of their agreement was that Asha was required to open an account at a commercial bank in Ipoh for their joint operation. Pursuant to this agreement a joint current account was opened by Asha Construction with the third defendant bank with the plaintiff naming Mr. Lim Mok Guan as a signatory to all cheques in conjunction with Encik Ahmad Senusi bin Mohammad Said or Encik Mohd. Zaini bin Mohamad Said named in the resolution of Asha dated 30 March 1992. Such resolution to remain in force until amended.

On 26 April 1993 Asha Construction filed a second resolution to the bank specifying that all Asha's cheques were to be signed by joint signatories of two individuals from group A and one from group B. Those from group A were as follows:

(1) Mr. Ahmad Senusi bin Mohammad Said;

(2) Mr. Mohd Nizer bin Abdullah;

(3) Mr. Mohd. Isa bin Ibrahim.

and those from group B were:

(1) Mr. Lim Mok Guan;

(2) Mr. Mohd. Zaini bin Mohd. Said.

The resolution was signed by the directors of Asha in accordance with s. 90 of the Articles of Association of Asha Construction (M) Sdn. Bhd.

It was clear to us that the bank acted on this second resolution when it honoured the cheque of RM850,000 dated 7 May 1993.

We upheld the contention of the defendant that there was no banker-customer relationship between the plaintiff and the defendants and the third defendant bank owed no duty whatsoever, to the plaintiff, who was not their customer. There is no gain saying that their customer was Asha Construction (M) Sdn. Bhd. using account number 0105129626 and acting in accordance with the instruction of the customer, Asha Construction (M) Sdn. Bhd. a cheque of that amount was paid into Asha's account at Kwong Yik Bank.

We agree with the judgment of the learned judge when he said at p. 229 of the Appeal Record:

> After having heard the evidence of the witnesses of the plaintiff and the defendants and bearing in mind the surrounding circumstances, I am of the view that any allegations of mistake raised by the plaintiff, in regard to the conduct of the defendant, in honouring the cheque of RM850,000.00, was without foundation.

We were of the unanimous view the learned judge had not erred and we affirm his decision to dismiss plaintiff's case. We therefore hereby dismissed the appellant's appeal with costs.